



TD 97/22 - Income tax: self assessment: can a person obtain a private ruling in terms of Part IVAA of the Taxation Administration Act 1953 (TAA) on whether a contract entered into on or after 1 July 1992 gives rise to a disposal of an asset in terms of section 160M of the Income Tax Assessment Act 1936 (ITAA)?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 November 1997*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: self assessment: can a person obtain a private ruling in terms of Part IVAA of the *Taxation Administration Act 1953* (TAA) on whether a contract entered into on or after 1 July 1992 gives rise to a disposal of an asset in terms of section 160M of the *Income Tax Assessment Act 1936* (ITAA)?

1. Yes.
2. Sections 14ZAF and 14ZAG of the TAA provide that a person may apply for a ruling on the way in which, in the Commissioner's opinion, a tax law applies in respect of a year of income in relation to an arrangement.
3. Section 13 of the *Taxation Laws Amendment (Self Assessment) Act 1992* provides that an application under section 14ZAF or 14ZAG of the TAA must not relate to an arrangement that began to be carried out before 1 July 1992.
4. Whether a taxpayer is entitled to obtain a private ruling in respect of a particular arrangement depends on whether the arrangement is one that began to be carried out **on or after** 1 July 1992. By section 14ZAC of the TAA, an arrangement is taken to have begun to be carried out if a contract is entered into requiring the arrangement to be carried out.
5. An 'arrangement' is very broadly defined in section 14ZAAA of the TAA and includes part of an arrangement. The arrangement may be being carried out, have been carried out or be a proposed arrangement (section 14ZAI of the TAA).
6. Arrangements may, but not necessarily, be a set of transactions or agreements such that, once the tax law is applied to them, they determine the extent of liability. It is not essential that an arrangement (or arrangements) includes all the necessary steps to establish the extent of liability, such as, the acquisition of the asset, the payment of consideration for its acquisition, the disposal of the asset and the receipt of consideration for its disposal. It suffices if an arrangement is capable of affecting the extent of liability for income tax (in the sense that it **can** affect the calculation of taxable income or tax payable).
7. A disposal of an asset is, in our view, an 'action', a 'course of action', a 'transaction', an 'agreement' or 'part of an arrangement', and thus is an 'arrangement' as defined in section 14ZAAA

of the TAA. It is also an arrangement that is capable of affecting the extent of liability for income tax. This is so because Part IIIA of the ITAA only operates to include a net capital gain in assessable income if there is a disposal (including a deemed disposal) of an asset to which the Part applies. Whether there is a disposal of an asset in terms of section 160M of the ITAA is one of the essential prerequisites for a liability for income tax to arise.

8. We take the view that a ruling on whether the terms or conditions of a contract give rise to a 'disposal' of an asset for the purposes of section 160M of the ITAA in a particular year of income is, in terms of sections 14ZAF and 14ZAG of the TAA, 'a ruling on the way in which, in the Commissioner's opinion, a tax law ... would apply' in respect of the income year in relation to an arrangement. We take this view because:

- (a) section 160M of the ITAA is a 'tax law' as defined in section 14ZAAA of the TAA, being a section of an Act which affects the extent of liability for income tax (see also paragraph 7 above); and
- (b) a ruling on how section 160M of the ITAA applies fits the description in sections 14ZAF and 14ZAG of the TAA of 'a ruling on the way in which, in the Commissioner's opinion, a tax law ... would apply'.

9. Even though an asset may have been acquired before 1 July 1992, a private ruling in terms of Part IVAA of the TAA can be obtained if the arrangement, constituting the disposal of the asset, began to be carried out on or after 1 July 1992.

10. On the facts in the question, the disposal began to be carried out on or after 1 July 1992 because the contract was entered into on or after 1 July 1992. A private ruling can, therefore, be obtained.

Note: If the contract for sale of the asset had been entered into before 1 July 1992, a person could not obtain a private ruling in relation to the disposal.

Commissioner of Taxation

12 November 1997

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[Related Determinations:](#) TD 96/6

[Related Rulings:](#)

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